



**Ninety-Eighth Legislature - First Session - 2003**  
**Committee Statement**  
**LB 250**

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**Hearing Date:** January 28, 2003

**Committee On:** Agriculture

**Introducer(s):** (Kremer)

**Title:** Change food safety code requirements

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

7	Yes	Senators Kremer, Erdman, Burling, Cunningham, Mossey, Preister, Vrtiska
0	No	
0	Present, not voting	
1	Absent	Senator Chambers

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**Proponents:**

Rick Leonard  
Greg Ibach  
George Hanssen  
Kathy Siefken  
Mark Lutz  
Jere Ferrazzo

**Representing:**

On behalf of Sen. Kremer, Introducer  
NE Dept. of Agriculture  
NE Dept. of Agriculture  
NE Grocery Industry Assn.  
NE Restaurant Assn.  
Douglas County Health Dept.

**Opponents:**

Robert J. Hallstrom

**Representing:**

NE Pharmacists Assn.

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 250 is brought at the request of the Department of Agriculture to update provisions of the Nebraska Pure Food Act and to extend sanitation and quality requirements of the Graded Egg Act to sales of eggs by smaller egg producers that are currently excluded . The bill adopts by reference as part of the Nebraska Pure Food Act the 2001 Food Code (a publication of the Food and Drug Administration of the U.S. Public Health Service) except those provisions that are excluded by 81-2,244.01 as amended by section 4 of the bill. The Nebraska Pure Food Act currently incorporates provisions of the 1995 Food Code.

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Provisions of the Food Code that are excluded are largely replicated in either existing sections of the Nebraska Pure Food Act or new sections added by LB 250. The Food Code provides a set of model standards for sanitation, storage and presentation of food at retail food establishments that states and localities may utilize as regulatory standards governing food establishments. The Food Code is revised periodically to keep pace with regulatory experience and advancements in knowledge of mitigating risk factors known to cause foodborne illness. The most significant changes from current law include the following:

- Food establishments would be required to comply with new requirements for cold holding temperatures for potentially hazardous foods. Potentially hazardous foods held at 45° would be required to be sold or disposed of within 4 days rather than 10 as currently allowed, and foods stored at 41° would be required to be sold within 7 days.
- The definition of food establishments regulated by the Nebraska Pure Food Act is modified to no longer exclude all establishments that sell only prepackaged, nonhazardous foods. Establishments that sell only certain types of prepackaged, nonhazardous foods listed in Section 5 of the bill would continue to be exempt.
- Private homes where foods that are not potentially hazardous are prepared for sale at farmers markets will be exempt from regulation provided the consumer is notified that the foods are prepared in an uninspected kitchen.
- The bill would require any food establishment, except temporary establishments and mobile food units, to have permanent running water located in the same building.

Finally, the bill revises inspection fees charged under the act as explained in the section-by-section summary.

#### SECTION BY SECTION SUMMARY:

Secs.1 & 2: Amends section 2-3512 and 2-3520 in conjunction with the outright repeal of 2-3517 by section 29 of the bill to Modify the Graded Egg Act so that egg handlers with less than 3,000 hens would only be exempted from the fee and license requirements of the act rather than all of the requirements of the act. The purpose of this change is to require smaller egg producers to comply with sanitation and quality requirements of the act in order to protect consumers. Section 2-3517 currently exempts the sale of eggs by small producers from the Graded Egg Act. Section 1 of LB 250 reassigns to section 2-3512 a provision currently contained in 2-3517 that provides that the requirements of 2-3512 (only shell eggs of at least grade B may be sold at retail) does not apply to persons exempt from comparable provisions of the federal Egg Products Inspection Act.

Sec. 3: Amends 83-2,239 to incorporate sections 19 and 22 through 27 of the bill into the Nebraska Pure Food Act.

Sec. 4: Amends 81-2,244.01 to adopt the 2001 Recommendations of the United States Public Health Service (2001 Food Code) and modifies which Code sections are excluded from incorporation by reference into the Nebraska Pure Food Act as follows:

- FDA changed some code section numbers so the bill changes some numbers to maintain the same requirements, [~~1-201.10(B)(2)~~, 1-201.10(B)(3), ~~(31)~~ (36), ~~(32)~~ (37), ~~(53)~~ (58),

~~(68)~~ and (73), 4-301.12(E)].

- The definition for Accredited Program in the FDA Food Code was excluded because it was unworkable [1-201.10(B)(1)].
- The definition for Person in the FDA Food Code was removed because it potentially conflicts with general statutory provisions [1-201.10(B)(57)].
- Some FDA Food Code sections are added to the list of excluded sections because they refer to other code sections that are excluded [2-103.11 and (K), 3-302.11(B)(4), 3-304.17, 3-401.11(C)(2) and (D)(2), 3-404.11(A), 3-701.11(C), 4-802.11(C), 5-103.12, 6-302.10].
- FDA modified the requirements for sick food employees so that the person in charge of a food establishment is only required to notify the regulatory authority when an employee is diagnosed with Salmonella, Shigella, E. coli, and hepatitis A, rather than requiring them to do so even when the employee is only suspected of having one of these illnesses as is currently required in §81-2,272.07 of the act. Code section numbers had to be modified in the bill to adopt this change [~~2-201~~, 2-201.11, 2-201.12, 2-201.13, 2-201.14].
- FDA changed some Food Code sections so that they are now acceptable, and do not need to be excluded [~~2-301.12, 2-301.14, 2-301.16, 2-402.11, 2-403.11, 3-201.14, 3-201.16, 3-304.16, 3-403.11~~].
- The bill excludes some FDA Food Code sections that no longer exist [~~2-301.13, 3-201.17(D), 3-401.11(A)(4), 3-401.15, 5-203.15, 6-301.11(B)~~].
- The bill excludes a FDA Food Code section that would conflict with section 22 of the bill [2-302.11].
- The bill excludes a FDA Food Code section that would conflict with section 23 of the bill [2-303.11].
- A new FDA Food Code section that would require whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory be obtained from a processing plant that labels the meat to indicate it meets the definition of whole-muscle, intact beef was excluded because processing plants do not currently label meat in this manner [3-201.11(E), 3-401.11(C)(2)].
- The bill excludes a FDA Food Code section that would conflict with section 27 of the bill [3-202.11(A)].
- The bill excludes a FDA Food Code section that would conflict with section 10 of the bill [3-202.11(D)].
- The bill excludes a FDA Food Code section that would conflict with section 24 of the bill

[3-304.13].

- The bill excludes a FDA Food Code section that would conflict with section 21 of the bill [3-403.11(C)].
- The bill excludes a FDA Food Code section that would conflict with section 26 of the bill [4-204.111].
- A new FDA Food Code section would require a sanitizer level indicating device for warewashing machines that does not work, therefore the requirement was excluded [4-204.117].
- A new FDA Food Code section would require a thin temperature probe which is expensive and not commonly used, therefore the requirement was excluded [4-302.12(B)].
- The bill excludes FDA Food Code sections that would conflict with sections 18 and 19 of the bill [5-103.12, 5-104.11, 5-104.12, 5-203.12, 6-302.10].
- The bill excludes a FDA Food Code section that would conflict with section 20 of the bill [5-203.15].
- A new FDA Food Code section would require posting hand washing signs in restrooms used by customers. The requirement was excluded because the Board believed such signs are inappropriate in customer restrooms [6-301.14].

Sec 5: Modifies the definition of food establishment so that:

- Not all types of food which is prepackaged and not potentially hazardous could be sold without being regulated under the act. Establishments would be regulated unless they only sold prepackaged foods with low health and safety risks. Included are soft drinks, candy, gum, chips, pretzels, cheese puffs, crackers, nuts, seeds, cookies, cakes and pastries. Currently, there are a number of retail establishments which are not regulated because they only sell prepackaged, not potentially hazardous food.
- Persons selling food which is not potentially hazardous at a farmers market would not be regulated so long as the consumer knows that the food was prepared in an uninspected kitchen.

Sec 6: Harmonizing amendment modifying the listing of the sections of the Food Code or the Nebraska Pure Food Act designating critical violations. The modifications are reflect the changes in incorporation of Food Code Sections and reflect where in the Nebraska Pure Food Act these violations are now found with the changes made in section 4 and other sections of the bill. What is a critical violation does not change.

Sec. 7: Includes references to new sections of the Act in a provision regarding conflicts between statutory requirements and FDA Food Code requirements.

Sec. 8: Changes the permit and inspection fees so that as of July 1, 2003, the director will set permit and inspection fees according to statutory guidelines. The legislated cash fund appropriation for the act would be the basis for the level of cash funds expended for activities under the act. The cash fee revenue could not be greater than 107% of the cash fund appropriation. The projected fiscal year end cash fund balance could not be greater than 17% of the cash fund appropriation. Statutory caps on the fees provide the upper limit that fees are not to exceed. The caps were set to represent a potential 26% increase across the board from the current fees. Any established fee increases or decreases would have to be equally allocated between all categories of food establishments.

Sec. 9: Removes a reference to a repealed section.

Secs 10-14: Incorporates the recommendations of the 2001 FDA Food Code for cold holding temperatures in existing sections of the Nebraska Pure Food Act. Currently, potentially hazardous food may be kept at 45°F for 10 days. FDA recommends that such food should only be kept at 45°F if it will be consumed within 4 days. If potentially hazardous food is to be held longer, it must be held at 41°F. Section 14 also lowers the hot holding temperature for potentially hazardous food from 140°F to 135°F.

Secs. 15&16: Modifies consumption dates listed on foods and discard dates, based on the new temperature and length of holding food requirements. Foods held at 41°F may now only be held for 7 days. Again, these changes are being made to generally follow FDA recommendations.

Sec. 17: Modifies temperature for holding oxygen reduced food to 41°F.

Sec. 18: Sets out water facility requirements for temporary food establishments. This section follows the 2001 FDA Food Code requirements, but was excluded from adoption by reference because the sections in the code made references to requirements for non-temporary establishments which conflicted with section 19 of the bill.

Sec. 19: Requires any food establishment, except temporary establishments and mobile food units, to have permanent running water. The Board felt very strongly that permanent establishments needed permanent washing facilities for sanitation reasons.

Sec. 20: Updates the statute requiring beverage carbonators to have adequate safety devices.

Sec 21: Strikes provisions regarding reheating food which are now appropriately regulated in the FDA Food Code. This section also lowers the temperature for reheated food from 140°F to 135°F.

Sec. 22: Specifies that most food handlers cannot wear fingernail polish or artificial fingernails, but wait and host staff may have such fingernails if they only minimally have contact with food or equipment. The Board recommended that the act should allow wait and host staff to wear polish or artificial nails and such items in limited circumstances do not appear to be a threat to food sanitation.

Sec 23: Specifies that food handlers may only wear plain jewelry such as wedding bands and medical information bracelets. The similar FDA Food Code section would not have allowed food handlers to wear medical information bracelets.

Sec 24: Specifies that linens should only contact food such as raw dough prior to being baked and food in a linen lined container for service. All linens used need to be washed between each use. The Board recommended that the act should allow establishments to use linens in these ways because they do not appear to pose any health threats.

Sec. 25: Specifies that food which may have been contaminated by someone with a contagious illness must be discarded. This follows FDA recommendations but could not be adopted by reference because the Food Code section referred to an excluded code section.

Sec. 26: Sets temperature requirements for vending machines to be in line with hot and cold holding temperature requirements.

Sec. 27: Specifies that potentially hazardous food may be received at 45°F if it is to be consumed within 24 hours. Otherwise food should be received at 41°F. Members of the Board were concerned that without this section food received at temperatures above 41°F would be rejected even if they were for immediate consumption and were below 45°F.

Sec. 28: Repeals original sections.

Sec 28: Outright repeals sections as follows:

§2-3517 Is inconsistent with new language.

§81-2,270.01 Repeats §81-2,251.05.

§81-2,270.07 Replaced by FDA Food Code [2-201.15].

§81-2,270.08 Replaced by FDA Food Code [2-301.12 and 2-301.14].

§81-2,270.09 Replaced by FDA Food Code [2-301.16].

§81-2,270.11 Replaced by FDA Food Code [2-402.11].

§81-2,270.12 Replaced by FDA Food Code [2-403.11].

§81-2,270.13 Replaced by FDA Food Code [3-201.14].

§81-2,270.18 Replaced by FDA Food Code [3-401.12].

Section 30 Emergency Clause

### **Explanation of amendments, if any:**

The committee amendment modifies the narrowing of the definition of food establishment that are exempted from regulation under the Nebraska Pure Food Act proposed in section 5 of the bill so that establishments that sell only hermetically-sealed canned goods would also continue to be exempt.

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**Senator Bob Kremer, Chairperson**